

ESTTA Tracking number: **ESTTA36671**

Filing date: **06/23/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

#### Opposers Information

<b>Name</b>	SparkNet Holdings, Inc.		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Nevada
<b>Address</b>	1788 Fifth Avenue West, Suite 309 Vancouver, BC V6J 1P2 CANADA		

<b>Name</b>	SparkNet Communications, L.P.		
<b>Entity</b>	Partnership	<b>Citizenship</b>	Nevada
<b>Composed Of:</b>	Sparknet Management, Inc. (United States)		
<b>Address</b>	711 S. Carson Street Carson City, NV 89701 UNITED STATES		

<b>Attorney information</b>	Derek A. Newman Newman & Newman, Attorneys at Law, LLP 505 Fifth Avenue South, Suite 610 Seattle, WA 98104 UNITED STATES randy@newmanlaw.com Phone:206 274 2800		
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#### Applicant Information

<b>Application No</b>	78439187	<b>Publication date</b>	05/24/2005
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<b>Opposition Filing Date</b>	06/23/2005	<b>Opposition Period Ends</b>	06/23/2005
<b>Applicant</b>	WCLR, Inc. 1645 W. Fullerton Avenue Chicago, IL 60614 UNITED STATES		

### **Goods/Services Affected by Opposition**

Class 038. All goods and services in the class are opposed, namely: Radio broadcasting
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<b>Related Proceedings</b>	78439180
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<b>Attachments</b>	78439187.pdf ( 6 pages )
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<b>Signature</b>	/dan/
<b>Name</b>	Derek A. Newman
<b>Date</b>	06/23/2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPARKNET COMMUNICATIONS, L.P.,  
a Nevada limited partnership; and  
SPARKNET HOLDINGS, INC., a Nevada  
Corporation,

Opposers,

v.

WCLR, INC.,

Applicant.

**Opposition No.**

**Mark: WHATEVER WE WANT**

**Serial No.: 78439187**

**Filing Date: June 22, 2004**

**Publication Date: May 24, 2005**

**NOTICE OF OPPOSITION**

In the matter of application Serial No. 78439187 filed on June 22, 2004 by WCLR, Inc. (“Applicant”) to register WHATEVER WE WANT as a trademark for use in connection with “radio broadcasting”, which was published in the Official Gazette on May 24, 2005, the following parties believe they will be damaged by Applicant’s registration of the WHATEVER WE WANT mark: SparkNet Communications, L.P. (“SparkNet”), a Nevada limited partnership, having its principal place of business at 711 S. Carson Street, Suite 4, Carson City, Nevada 89701; and SparkNet Holdings, Inc. (“Holdings”), having its principal place of business at c/o Bohn & Associates Media Inc., 1788 Fifth Avenue West, Suite 309, Vancouver, British Columbia V6J 1P2. Accordingly, Holdings and SparkNet (together, “Opposers”) oppose Applicant’s registration of that mark.

The grounds for this opposition are as follows:

1. On June 16, 2005, Robert Perry (“Perry”) assigned to Holdings the entire right, title, and interest in and to U.S. Trademark Registration No. 2884476 for PLAYING WHAT WE WANT, registered for “streaming of audio material on the Internet”, together with the goodwill of the business connected therewith. A true

and correct copy of the Trademark Assignment from Perry to Holdings is attached hereto.

2. SparkNet is the exclusive U.S. licensee of Holdings's PLAYING WHAT WE WANT mark. Opposers, their predecessors in interest, and their licensees and sublicensees, have used the PLAYING WHAT WE WANT mark exclusively and continuously in commerce in the United States since at least May 1, 2001 for radio programming services that have expanded to include terrestrial radio broadcasting, as well as the streaming of Internet radio broadcasts.
3. Opposers have used the mark PLAYING WHAT WE WANT for a number of years in connection with their unique radio programming product, which is offered to consumers via Internet streaming and terrestrial radio broadcasts. Accordingly, consumers strongly associate Opposers with services that are related to radio programming. Terrestrial radio broadcasting is well within the natural zone of expansion for Opposers' use of their PLAYING WHAT WE WANT mark.
4. Opposers' PLAYING WHAT WE WANT branded radio product is widely recognized as the most successful radio format launched in the past 20 years, and the PLAYING WHAT WE WANT mark enjoys extensive goodwill and consumer recognition in connection with it. This nationwide recognition has resulted in extensive unsolicited media coverage. Accordingly, Opposers' PLAYING WHAT WE WANT mark is famous.
5. Consumers are likely to be confused, and are actually confused, by Applicant's use of a confusingly similar mark for services identical to those offered by Opposers.
6. Opposers' services and Applicant's services are offered through identical channels of trade. Moreover, the target consumers for both parties' services – radio listeners – are identical. The identical channels of trade, and the fact that both parties' services are targeted to identical consumers, make it inevitable that consumers will confuse Opposers' mark with Applicant's mark.
7. There is no issue of priority concerning U.S. Trademark Application No.

78439187, since Opposers had use and registration of their PLAYING WHAT WE WANT mark prior to Applicant's June 22, 2004 filing date. Moreover, Applicant filed U.S. Trademark Application No. 78439187 on an intent to use basis, and has apparently not even begun to use its WHATEVER WE WANT mark. Opposers have continuously used and extensively advertised the trademark PLAYING WHAT WE WANT throughout the United States for a number of years. The PLAYING WHAT WE WANT trademark was famous, highly distinctive and recognized by the public as identifying the goods and services of Opposer prior to June 22, 2004.

8. On information and belief, Applicant is an Illinois corporation, with a place of business at 1645 W. Fullerton Avenue, Chicago, Illinois 60614.
9. Opposers enjoy substantial and exclusive good will and good reputation in connection with their PLAYING WHAT WE WANT trademark. This goodwill and reputation will be harmed by the use and registration of the confusingly similar mark WHATEVER WE WANT sought to be registered by Applicant.
10. Applicant's WHATEVER WE WANT mark so resembles Opposers' PLAYING WHAT WE WANT trademark as to be likely, when applied to the Applicant's services, to cause confusion, mistake, or to deceive as to the source of origin of Applicant's services by creating the erroneous impression that Applicant's services originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Opposers.
11. Applicant's WHATEVER WE WANT mark follows the pattern of Opposers' PLAYING WHAT WE WANT mark in that Applicant's mark simply removes the word "playing" and adds another syllable to the dominant words WHAT WE WANT in Opposers' mark. Consumers and potential consumers are likely to believe that Applicant's mark is one of Opposers' marks, thereby causing confusion, mistake, or deception as to the source of Applicant's services by creating the erroneous impression that Applicant's services originate with, are

sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Opposers.

12. The granting of a trademark registration for the WHATEVER WE WANT mark to Applicant would be contrary to 15 U.S.C. § 1052(d) and would violate or diminish the prior and superior rights of Opposers in their PLAYING WHAT WE WANT trademark.
13. The granting of a trademark registration for the WHATEVER WE WANT mark to Applicant would also be contrary to 15 U.S.C. §1052 and 1125(c) and would dilute the distinctive quality of Opposers' famous PLAYING WHAT WE WANT trademark.
14. Opposers will be damaged if Applicant obtains a registration of the WHATEVER WE WANT mark because Applicant will obtain statutory rights in the mark in violation and in derogation of the established prior rights of Opposers in their PLAYING WHAT WE WANT trademark.

WHEREFORE, Opposers ask that their opposition to Application No. 78439187 be sustained and that Applicant's proposed registration of the mark WHATEVER WE WANT be refused. Please direct all correspondence to the attention of Derek A. Newman, Newman & Newman, Attorneys at Law, LLP, 505 Fifth Avenue South, Suite 610, Seattle, Washington 98104.

Opposers file the required fee of six hundred dollars (\$600.00) contemporaneous with the filing of this Notice of Opposition. The undersigned is authorized to act on behalf of Opposers SparkNet and Holdings.

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Dated this 23<sup>rd</sup> day of June, 2005.

**NEWMAN & NEWMAN  
ATTORNEYS AT LAW, LLP**

By: \_\_\_\_\_

Derek A. Newman  
Randall Moeller

505 Fifth Avenue South, Suite 610  
Seattle, WA 98104  
(206) 274-2800 Telephone  
(206) 274-2801 Facsimile

**Attorneys for Opposers  
SparkNet Communications, L.P. and  
SparkNet Holdings, Inc.**

## TRADEMARK ASSIGNMENT

WHEREAS, Robert Perry, an individual with an address of 131 Waterford Road, Island Park, New York 11558 (hereinafter "Assignor"), is the owner of all right, title, and interest in the United States in and to the marks PLAYING WHAT WE WANT and JACK.FM (hereinafter the "Marks"), the goodwill of the business connected therewith, common law rights accrued through use of the Marks, and U.S. Trademark Registration No. 2,884,476 for PLAYING WHAT WE WANT and U.S. Trademark Application Serial No. 78/316,636 for JACK.FM; and

WHEREAS, SparkNet Holdings, Inc., a corporation organized and existing under the laws of the State of Nevada with a place of business at c/o Bohn and Associates Media Inc., 1788 Fifth Avenue West, Suite 309, Vancouver, British Columbia V6J 1P2 (hereinafter "Assignee"), is desirous of acquiring the entire right, title and interest in the United States in and to the Marks and in and to all applications, registrations, renewals and extensions that may be granted thereon, together with the goodwill of the business connected therewith and any common law rights accrued through use of the Marks;

THEREFORE, BE IT KNOWN that in consideration of ten United States dollars (\$10.00) and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, said Assignor has sold, assigned, transferred and by these presents does hereby sell, assign, and transfer unto said Assignee, its successors and/or assigns, the entire right, title and interest in and to the Marks and in and to all applications, registrations, renewals and extensions that may be granted thereon, together with the goodwill of the business connected therewith and any common law rights accrued through use of the Marks, as well as the right to recover for any past infringement thereof.

**ROBERT PERRY**

Dated: June 18, 2006

By: 